RECENT CASES.

BANKRUPTCY—CHATTEL MORTGAGE—PERMITTING MORTGAGOR TO SELL.—IN RE HULL, 8 AM. B. R. 302.—The claimant sold a stock of goods to the bankrupt and, within the four months prior to petition, took a mortgage back of those and other goods, leaving power to sell and replace goods included in the mortgage. *Held,* that the District court must be governed by the ruling of the Federal court, which held that mortgages with such power of sale were fraudulent, rather than by the decision of the State court, holding them valid.

This opinion seems wrong, both as to the law which should govern the Bankruptcy court in its decision and as to the rule of the Federal courts regarding liens of this nature. Against the unsupported contention that the rule of the Federal court should govern, see *Etherbridge v. Sperry,* 139 U. S. 266; *In re Fall City Shirt Mfg. Co.,* 3 Colliers' Am. B. R. 437. The latter case held that "the plain intention of Congress was to recognize liens precisely as the State law had fixed them." The case of *Robinson v. Eiliot,* 22 Wall. 513, relied upon as authority in the present case to show the position taken by the Federal courts that such liens are fraudulent, does not, as explained by the later case of *Etherbridge v. Sperry, supra,* establish any such rule, but rather that the validity of such mortgages will be determined according to the circumstances of each case, taken in connection with the law of the State in which the court sits. *Means v. Dowd,* 128 U. S. 273; *Parker v. Moore,* 115 Fed. 799; *Peoples' Savings Bank v. Bates,* 120 U. S. 556. In the latter case such a mortgage as the one in question was held valid under the Michigan law.

BANKRUPTCY—DISMISSAL OF INFANT'S PETITION TO BE ADJUDGED BANKRUPT.—IN RE PENZANSKY, 8 AM. B. R. 99 (MASS.).—*Held,* that an infant may be the subject of a petition in bankruptcy if the debts from which discharge is sought cannot be disaffirmed on coming of age, and that such petition should not be dismissed.

In this country it has been held that an infant cannot be adjudged a bankrupt in either voluntary or involuntary proceedings. *In re Eidenmiller,* 110 Fed. 594; *In re Dugend,* 100 Fed. 274. In these cases, however, the debts from which release was sought could be disaffirmed and it was intimated that a petition of bankruptcy would be granted if the liability had been for necessaries. See also *In re Brice,* 2 Am. B. R. 197, where the court reaches a conclusion in accord with that of the principal case. In England it has been an open question whether debt for necessaries would support a petition in bankruptcy or not. *In re Soltykoff,* 1 Q. B. 415.

BANKRUPTCY—JURISDICTION OF BANKRUPTCY COURT—ADVERSE CLAIMS TO PROPERTY.—IN RE TUNE, 115 FED. 906.—Parties who held notes waiving exemptions, levied on Tune's property. Several days later he was adjudi-

cated a bankrupt. *Held*, that the referee may enjoin the creditors from all further proceedings in the State courts against the bankrupt.

The older decisions hold that the assignee must defend actions against the bankrupt in the court in which they were begun. *Eyster v. Gaff*, 91 U. S. 521. Since the Bankruptcy Act of 1898, the weight of authority is that such actions should be brought in the District court, but there is some doubt. *Bardes v. Hawarden Bank*, 178 U. S. 524, holds that controversies between the receiver and strangers should not be brought within the jurisdiction of the Federal courts without the consent of the strangers. Other decisions hold that the District court obtains jurisdiction over all property to which the adverse claim is merely colorable, and this seems the better rule. *Bryan v. Bernheimer*, 181 U. S. 188; *Mueller v. Nugent*, 22 Sup. Ct. 269.

BASTARDY—RESEMBLANCE OF CHILD TO DEFENDANT—INTRODUCTION OF CHILD IN EVIDENCE.—KELLY V. STATE, 32 So. 56 (ALA.).—*Held*, that a bastard child may be introduced in evidence, to show his resemblance to the defendant.

By the weight of authority, resemblance, as indicating that the defendant is the parent of the child, is admissible in evidence; and to establish it the child can be exhibited. *Finnegan v. Dugan*, 14 Allen 197; *Guant v. State*, 50 N. J. L. 490; *Whart., Ev.*, sec. 346. *Contra*, see *Reitz v. State*, 33 Ind. 187; *Keniston v. Rowe*, 16 Me. 38; *Hanawalt v. State*, 64 Wisc. 84; *Beck, Med. Jur.*, 615; although the reason assigned, the inconclusiveness of such evidence, is hardly satisfactory. In Iowa the age of the child determines the question. *State v. Smith*, 54 Iowa 104. In *State v. Britt*, 78 N. C. 479, the testimony of witnesses to the resemblance was permitted, but this is generally denied. *U. S. v. Collins*, 1 Cranch 592. But as to the analogous case of comparison of handwritings, see *Whart., Ev.*, sec. 708.

BOUNDARIES—LEGISLATIVE DETERMINATION—CONCLUSIVENESS ON COURTS.—CAMERON'S EX'RS V. STATE, 68 S. W. 508 (TEX.).—The legislature in 1833 granted lands to Greer County for school purposes. Subsequently the United States Supreme Court decided that Greer County was not, and never had been, a part of Texas. *Held*, that the action of the legislature in treating Greer County as a part of the State at the time the grant was made is still conclusive on the courts, and such school lands cannot be recovered from the grantee of the county on the ground that, as the county was never a part of the State the grant was void.

The court relied upon *Harrold v. Herington*, 64 Tex. 233, and cases cited therein. The decisions of the State courts which were quoted as authority for the proposition that the judicial department could not limit the jurisdiction asserted by the political department are cases in which the boundary had not been settled by the U. S. Supreme Court. *State v. Dunwell*, 3 R. I. 128; *Bedell v. Loomis*, 11 N. H. 15. In the following cases the controversy rose out of questions of national and not of State boundary. *Foster v. Neilson*, 2 Pet. 253; *U. S. v. Arredondo*, 6 Pet. 691. The court disregarded these distinctions. There is much authority on the other side of the question. It appears that the legislature never had jurisdiction over Greer County, hence all acts in relation thereto were void. *Norton v. Shelby*, 118 U. S. 434. Legislative authority of a State must spend its force within its territorial

limits. *Cooley, Const. Lim.*, 5th ed., 151; *Hilton v. Guyot*, 159 U. S. 163. The case is in analogy to grants to fictitious persons which have repeatedly been held void. *Moffatt v. U. S.*, 112 U. S. 31; *Wash., Real Property* 265.

BREACH OF MARRIAGE PROMISE—REQUEST TO PERFORM—REFUSAL.—CLARK v. COREY, 52 ATL. 811 (R. I.).—The defendant on account of sickness caused by drunkenness was unable to marry plaintiff on the day set. Without any further communication between them in regard to marriage, suit was brought for breach of promise. *Held*, that the plaintiff having made no offer or request, the defendant's failure to offer to marry after the day set did not amount to a refusal constituting a breach. Tillinghast, J., *dissenting*.

When the day set had passed, the promise became a general one, which the law construes to be performed upon request. *Kelly v. Renfro*, 9 Ala. 325. If the plaintiff has made no request or offer, a refusal must be shown on the part of the defendant. *Cole v. Halliday*, 4 Mo. App. 98; *Coil v. Wallace*, 24 N. J. L. 291. The dissenting opinion lays stress on a quotation from *Seymour v. Gortside*, 2 Dowl. & Ry. 55; "if after an engagement to marry, and the lapse of the time agreed upon, the gentleman omits to offer to marry, it is generally considered a refusal." But the weight of the English cases as well as the American is *contra*. *Gough v. Far*, 2 Car. & P. 631.

CARRIERS—EJECTION OF PASSENGER—USE OF TICKET ON DAY ISSUED.—GEORGIA R. CO. V. BALDONI, 42 S. E. 364 (GA.).—*Held*, that a notice in a railroad station to the effect that tickets must be used on day issued is not notice to a passenger, unless it is shown that he had read the notice or was directed to, and that an ejection from a train because a ticket was two days old was unjustified.

A railroad company has the right to provide and insist that passenger tickets shall be used upon the day issued, but such condition should be endorsed upon the ticket, or notice given to passenger. *Elmore v. Sand*, 54 N. Y. 512; *Hill v. Syracuse, B. & N. Y. R. R. Co.*, 63 N. Y. 101. One cannot be held to contracts of this nature where they know nothing of the condition, and to which they had not expressly or impliedly assented. *Blossom v. Dodd*, 43 N. Y. 264; *Rawson v. Penn. R. R. Co.*, 48 N. Y. 212.

COVENANT OF WARRANTY—MAINTENANCE OF DIVISION WALL—BREACH.—ENSIGN ET AL. V. COLT, 52 ATL. 829 (CONN.).—*Held*, a right in an adjoining owner, enforced by injunction, to maintenance of wall half of which is on grantee's land constitutes breach of the covenant of warranty to grantee. Hamersley and Prentice, JJ., *dissenting*.

Some courts hold broadly that a right in a third party to an easement in property granted, when enforced, may constitute breach of covenant of Warranty. *Harlow v. Thomas*, 15 Pick. 66; *Lamb v. Danforth*, 59 Me. 322. But *contra*, if easement is consistent with ownership and possession of land conveyed, there is no breach. *Mitchell v. Warner*, 5 Conn. 498. Also, if easement is open and visible, and of a continuous character; *Patterson v. Arthurs*, 9 Watts 154; or if easement is mutual and a benefit. *Hendricks v. Stark*, 37 N. Y. 106. The great diversity in the decisions seems due to the widely different views courts take of the nature and scope of the covenants of warranty and against incumbrances. No uniform rule as to their construction appears to exist.

EVIDENCE—MALICIOUS PROSECUTION—MISLEADING INSTRUCTION—SOUTHERN CAR & FOUNDRY CO. v. ADAMS, 32 So. 503 (ALA.).—*Held,* in an action against a corporation that evidence as to defendant's financial condition for determining punitive damages is inadmissable.

The English rule seems to be that evidence of wealth and rank is admissible only in cases of breach of marriage promise. *James v. Biddington,* 6 Car. & P. 589. In this country, though there is direct conflict, the tendency is to admit such evidence more freely, as in *Pullman Pal. C. Co. v. Lawrence,* 74 Miss. 808, where questions as to assets, dividends, etc., were allowed, and *Bennett v. Hyde,* 6 Conn. 24, where recovery was increased through influence of position and wealth. In *Jones v. Jones,* 7 Ill. 562, it was held error to instruct a jury to consider defendant's pecuniary ability.

EVIDENCE—SUCCESSIVE VERDICTS CONTRARY TO.—MCCANN V. NEW YORK & I. C. R. R. CO., 76 N. Y. SUPP. 684.—Four successive juries brought in verdicts for the plaintiff. On appeal the verdicts of the first three juries were set aside as contrary to the weight of evidence. *Held,* fourth verdict will be sustained. McLaughlin and Ingraham, JJ., *dissenting.*

The court based its decision on the principle that a verdict contrary to evidence is the result of bias, passion, prejudice or mistake. *Morss v. Sherill,* 63 Barb. 21. It concluded that where four juries arrive at the same conclusion all these reasons are dissipated. The prevailing opinion, however, is that where justice has not been done, but the jury persists in finding a wrong verdict, the duty of the court is to set it aside as often as returned. *Coffin v. Phoenix Ins. Co.,* 15 Pick 291, 295; *Mullins v. Wieland,* 68 Cal. 231, and cases cited.

EXTRADITION—FUGITIVE FROM JUSTICE—PRESENCE IN DEMANDING STATE.—PEOPLE V. HYATT, 64 N. E. 325 (N. Y.).—A requisition for the extradition of a person not in the demanding State at the time of the commission of the crime of larceny and false pretences, *held,* not valid on the ground that his constructive presence did not constitute him a fugitive from justice. Haight and Werner, JJ., *dissenting.*

In *People v. Adams,* 3 Denio 190, the facts were the same as in this case, but the opposite conclusion was reached. The question has never been settled by the U. S. Supreme Court. The only case bearing upon the subject is *Cook v. Hart,* 146 U. S. 183. It was there intimated that one may commit an offense against a State upon whose soil he has never set foot. This dictum cannot be taken to determine that the offender would be a fugitive from justice. The weight of authority is clearly the other way. *State v. Hall,* 115 N. C. 811, 28 L. R. A. 289.

INJURY TO EMPLOYEE—ORDINANCES—ASSUMPTION OF RISK.—MARTIN V. CHICAGO, R. I. & P. R. CO., 91 N. W. 1034 (IOWA.).—When a brakeman enters into the employ of a railroad with the knowledge that in running through a city the speed exceeds the rate allowed by ordinance, *held,* that he assumes the risk of such increased speed, though injury arises from violation of the ordinance.

The common law rule is that an employee waives all right to damages when he continues in an employment obviously dangerous. *Greenleaf v. Railroad Co.,* 29 Iowa 14. The breach of a statute not for the protection of the employee does not give him the right to damages, if injured. *Flem-*

ming v. St. Paul D. R. Co., 27 Minn. 111. The English courts, however, hold that the maxim, "Volenti non fit injuria," does not apply when the injury arises from a direct breach of a statutory obligation. *Braddeley v. Granville*, L. R., 19 Q. B. 423. This rule has been adopted in Illinois, Missouri, Ohio and Indiana. There is also a difference of opinion when the statute is for the protection of the employee. The English rule is that the maxim has no application. *Groves v. Lord Wimborne*, 2 Q. B. 402. The Massachusetts rule, which seems to be much the better, is that when an employee continues in his employment, knowing that his employer is breaking the statute, he waives all right to claim under the statute. *O'Maley v. South Boston Gaslight Co.*, 158 Mass. 135. Many States follow the Massachusetts rule, including Iowa and New York. *Ford v. Railway Co.*, 106 Iowa 85. *Ryan v. Long Island Railroad*, 51 Hun. 607.

INSURANCE—INSURABLE INTEREST—SOLE OWNERSHIP.—STEINMEYER V. STEINMEYER, 42 S. E. 184 (S. C.).—*Held*, an insurance policy requiring sole and unconditional ownership is not void when taken out by the grantee of realty by deed of gift, though the deed has been adjudged void as against the grantor's creditors.

The existence of a lien on property is not a breach of a condition in a fire policy requiring sole and unconditional ownership in the assured. *Friezer v. Allemania Fire Ins. Co.*, 30 Fed. 352; *Strong v. Manufacturer's Ins. Co.*, 27 Mass. 40. Where fact of a pending litigation affecting the premises insured was not communicated to the insurer at the time of executing the policy, the policy is not thereby vitiated. *Hill v. Lafayette Ins. Co.*, 2 Mich. 476; *Lang v. Hawkeye Ins. Co.*, 74 Iowa 673.

LEGISLATIVE AUTHORITY TO ERECT STRUCTURES—ABUTTING OWNER'S RIGHTS.—PAPE V. N. Y. & H. R. R. CO., 77 N. Y. SUPP. 725.—Defendant by authority of the legislature constructed a viaduct in a public street occupying more than the previous road-bed. The structure interfered with the easements of light, air, and access of abutting property owners. *Held*, such construction is a trespass. Van Brunt, P. J., *dissenting*.

The weight of authority upholds this decision. *Reining v. R. R. Co.*, 128 N. Y. 157. The governing principle was stated in *Lewis v. R. R. Co.*, 162 N. Y. 202, that where easements are interfered with, even though by governmental authority, the injured parties must be compensated. However, it was held in *Fries v. R. R. Co.*, 169 N. Y. 270, that when a company is obliged under act of the legislature to build a viaduct in place of a depressed cut, it commits no trespass in carrying out the work. But this attempted distinction between a mandatory and a permissive statute, is unsound when the rights of third parties are violated.

LIFE INSURANCE—SUICIDE—SANITY—RATIONAL INTENT—SUPREME LODGE MUT. PROTECTION V. GELBKE, 64 N. E. 1058 (ILL.).—Where there was an agreement that the company should not be liable in case of insured's death from suicide, sane or insane, *held*, that if the insured committed the act causing his death voluntarily, understanding the physical nature of his act. and intending to take his own life, the company was exempt whether the intent was rational or not.

The distinction pointed out in this case is generally accepted in the United States. *May, Ins.* (3rd ed.), vol. 1, secs. 307, 324; *Bigelow v.*

Berkeshire L. Ins. Co., 93 U. S. 284; *De Gogorza v. Knickerbocker L. Ins. Co.*, 65 N. Y. 232. And where the stipulation "sane or insane" or its equivalent is omitted the act is not suicide within the meaning of the policy. Even though the insured intends his death, if by reason of insanity he cannot appreciate the moral character of his act, or is impelled by an uncontrollable impulse. *Ins. Co. v. Terry*, 15 Wall. 580; *May, Ins.* (3d ed.), vol. 1, sec. 307. In England the distinction is not recognized, and although there is no clause as to insanity in the policy, still the act will be considered suicide when done voluntarily, in the pursuance of an intelligent purpose, even though by reason of insanity the insured cannot understand the moral character of his act. *Bowdaile v. Hunter*, 5 M. & G. 639. English rule is followed in Massachusetts. *Cooper v. Mass. Mut. L. Ins. Co.*, 102 Mass. 227.

NEGLIGENCE—CARRIERS OF PASSENGERS—INJURIES.—TOBENG v. METROPOLITAN ST. RY. CO., 76 N. Y. SUPP. 411.—Plaintiff was injured by the premature starting of a street car, which, while it was slowly moving, he attempted to board. *Held*, that an instruction that, in all ordinary cases, to attempt to board a moving public vehicle is negligent was erroneous.

The instruction expresses the established rule in the case of steam railroads. *Missouri Pac. R. R. Co. v. Texas R. R. Co.*, 36 Fed. 879; *Bacon v. Delaware R. R. Co.*, 143 Pa. St. 14. A distinction has often been made where the motion was slight; *B. & O. R. R. Co. v. Kane*, 64 Md. 11; although the only decision to that effect in this country since 1894, *Walthers v. Chic. & N. W. R. R. Co.*, 72 Ill. App. 354, has been overruled. *C. & A. R. R. Co. v. Flaharty*, 96 Ill. App. 563. But this rule does not apply to street railroads; *Corbin v. West End St. R. R. Co.*, 154 Mass. 197; and the decisions to that effect are supported by abundant text authority. *Shearm. & Red., Neg.*, sec. 282; *3 Thomp., Neg.*, secs. 35, 65. Most of the cases cited to uphold the opposite view involve some other element of negligence. *Dietrich v. St. R. R. Co.*, 58 Md. 347; *Reddington v. Traction Co.*, 132 Pa. St. 154.

NEGLIGENCE—DANGEROUS PREMISES—RAILROAD TURNTABLE.—C., B. & Q. R. R. CO. v. KRAYENBUHL, 91 N. W. 880 (NEB.).—A child of four years was injured while playing on a turntable. *Held*, that the owners of the turntable were negligent, in that it was not kept securely locked.

The general rule is that one who maintains on uninclosed premises dangerous appliances of a nature likely to attract children in play is liable to a child injured thereby, although trespassing. *R. R. Co. v. Stout*, 17 Wall 657; *R. R. Co. v. McDonald*, 152 U. S. 262. The presence of the children must have been reasonably anticipated. *Phila., etc., R. Co. v. Hummell*, 44 Pa. St. 375. It has, on the other hand, been held that there is no liability unless the negligence may be considered as equivalent to a wanton injury. *Shea v. Gurnly*, 163 Mass. 184; *Walsh v. Fitchburg R. Co.*, 145 N. Y. 301. And the general rule that there is no duty to trespassers has been applied in the case of children. *Peters v. Bowman*, 115 Cal. 345; *Clark v. Manchester*, 62 N. H. 577. As stated in the opinion, there is a so-called "doctrine of the turntable cases," in line with the present decision. *R. R. Co. v. Stout* and *R. R. Co. v. McDonald, supra*. This has been affirmed in Ohio, Georgia,

and several Western States, and repudiated in New York, Massachusetts, New Hampshire, and New Jersey.

NOTES—VALIDITY—CONSIDERATION PARTLY ILLEGAL.—DOUTHART v. CONGDON, 64 N. E. 348 (ILL.).—Where a city ordinance prohibited brokers from doing business without a license, notes given to the brokers in settlement of business transacted by them for the makers, including commission, were *held*, absolutely void, the partial illegality of consideration vitiating the whole.

Where two or more notes are given for an indebtedness, part of which was incurred for an illegal consideration, the law seems uncertain whether the total amount should be vitiated or not. *Carradine v. Wilson*, 61 Miss. 573, rules that any note larger than the illegal consideration may be applied thereto and recovery had on the others. When considerations can be separated, recovery may be had *pro tanto* as far as it is founded on a valid consideration. *Graves v. Safford*, 41 Ill. App. 659. The court here, however, has overlooked these distinctions and applied the well-established rule that where part of the consideration is illegal the whole is void as being inconsistent with law and public policy. *Scott v. Gillmore*, 3 Taunt. 226; *Perkins v. Cummings*, 68 Mass. 258.

NUISANCE—ACTION BY LESSEE—LANDLORD AND TENANT.—BLY v. EDISON ELECTRIC ILLUMINATING CO., 64 N. E. 645 (N. Y.).—A tenant in possession of premises injuriously affected by the operation of an electric lighting plant can sue to abate the same, though the lease was made during the existence of the nuisance. Parker, C. J., and Haight, J., *dissenting*.

This is the first departure of the New York courts from the doctrine of *Kernochan v. R. R. Co.*, 159 N. Y. 568. In that case it was held that a tenant, who renewed his lease during the existence of a nuisance caused by an elevated railroad, could not bring an action to abate the same, for he must be presumed to have accepted the lease at a lower rent. The court refuses to place that construction on this case because it was not intended to be applied to the general law of nuisances, but to a condition created by the operation of elevated railroads, which have no parallel in our jurisprudence. The rule of the *Kernochan* case has been applied in New York where the cause of the injury was a polluted stream *(Yoos v. Rochester*, 92 Hun. 481), and a tannery *(Frances v. Schoellkopf*, 53 N. Y. 152). Also in Massachusetts, where the injury was caused by an individual. *Baker v. Sanderson*, 3 Pick. 348. The principal case, however, is well considered, and the distinction appears to be just and proper.

PRINCIPAL AND SURETY—PAYMENT OF USURIOUS DEBT BY SURETY—ESTOPPEL OF PRINCIPAL.—BLAKELEY ET AL. v. ADAMS, 68 S. W. 473 (KY.). —*Held*, that a principal is not estopped to set up usury in the original debt, when sued by the surety on a contract for indemnity, unless he stood by and permitted the surety to pay the debt in ignorance of the fact that it contained usury. Paynter, Hobson and White, JJ., *dissenting*.

This decision seems unsupported by sound reason or authority. The universal rule is that the principal is estopped to plead usury against his surety, unless the surety was privy to the usury. *Maples v. Cox*, 74 Ga. 701; *Turman v. Looper*, 42 Ark. 500. So where one became surety in ignorance of usury in the debt, but paid with knowledge, he could recover of the principal the whole amount paid unless he paid contrary to principal's order.

Ford v. Keith, 1 Mass. 139. The ground of this decision is that the contract for indemnity was without consideration, and that there was a mere substitution of the surety in place of the original payee; and that such a mere change of payee does not estop the debtor to plead usury. *Kendall v. Crouch,* 88 Ky. 199. But the dissenting justices point out that the payment of the original debt, the loss of the use of his money by the surety, and the giving of time to the principal was sufficient consideration; *Mann v. Bank,* 104 Ky. 852; and that the decision places the innocent surety in a position inferior to that of the mere assignee for value to whom the debtor has renewed the obligation, since against him the debtor is estopped to plead usury. *Stone v. McConnell,* 62 Ky. 54.

PRIVATE CORPORATION—INSOLVENCY—PREFERRING DIRECTORS.—NAPPANEE CANNING CO. v. REID, MURDOCK & Co., 64 N. E. 870 (IND.).—*Held,* that an insolvent private corporation may prefer its own directors, although their votes are necessary to accomplish the preference. Hadley, J., *dissenting.*

Several decisions support this doctrine without restriction; *Warfield, Howell & Co. v. Marshall & Co.,* 72 Ia. 666; *Planters Bank v. Whittle,* 78 Va. 737; others, with the qualification that the vote of the director preferred should not be necessary to secure the preference; *Savage v. Miller,* 56 N. J. Eq. 432; or that the transaction be carefully scrutinized; *Hulings v. Hulings Lumber Co.,* 38 W. Va. 351; or that the act be considered prima facie fraudulent. *Schufeldt v. Smith,* 131 Mo. 280. But the weight of authority upholds the contrary. *Smith v. Putnam,* 61 N. H. 632; *Atwater v. American Bank,* 151 Ill. 605. Although the reason generally advanced—that after insolvency, the directors are so far trustees for the creditors as to preclude preference—is hardly sound. *Bank v. Lumber Co.,* 90 Mich. 345; *Hollins v. Brierfield Co.,* 150 U. S. 371; *XII Yale Law Journal* 63.

NUISANCE—CONSTRUCTION OF SUBWAY—USE OF STREETS.—EATES V. HOLBROOK ET AL., 64 N. E. 181 (N. Y.).—Where sub-constractors on the New York City subway erect and maintain large storage structures which cause serious loss to immediately neighboring hotel proprietors and same could be as well maintained in sparsely settled districts or divided into small buildings. *held,* that they constitute a nuisance. Parker, C. J, and O'Brien, J., *dissenting.*

The legality of erecting the structures was unquestioned; Laws 1890, c. 729. But taking all the facts into consideration, they were permanent, and under the dictum of *Baltimore & P. R. Co. v. First Baptist Church* 108 U. S. 317, constituted a nuisance. Benefit to the public is moreover no excuse. *Susquehanna Fertilizer Co. v. Spangler,* 86 Md. 562.

REAL PROPERTY—INFANT'S DEEDS—AFFIRMANCE.—SHIPP V. MCKEE ET AL., 32 So. 281 (MISS.).—Where a person remains silent regarding his deed executed during infancy, *held,* that he has, after reaching majority, the entire period allowed by the statute of limitations in which to disaffirm.

This is contrary to the general rule that an infant's deed must be disaffirmed within a reasonable time after majority. *Delano v. Blake,* 11 Wend. (N. Y.) 85; *Goodnow v. Empire Lumber Co.,* 31 Minn. 468. Statutes have been passed in at least two States to this same effect. *Leacox v. Griffith,* 76 Iowa 89; *Johnson v. Storie,* 32 Neb. 610. Decisions in accord with the case in hand, however, are common in some jurisdictions. *Wills v. Seixas,* 24 Fed. 82; *Prout v. Wiley,* 28 Mich. 164.